

ATTORNEY GENERAL'S REPORT REGARDING THE JULY 6, 2015, OFFICER INVOLVED SHOOTING IN BATH, NEW HAMPSHIRE

INTRODUCTION

New Hampshire Attorney General Joseph A. Foster announces that the Attorney General's Office has made a determination that the officer-involved shooting in Bath, New Hampshire on July 6, 2015, that resulted in the death of Hagen Esty-Lennon of Canterbury, New Hampshire, was a legally justified use of deadly force.

This report summarizes the Attorney General's findings and conclusions based on information gathered during the investigation, including police cruiser video, police body cameras, witness interviews, the statements provided by both officers, and medical information. Based on that information, and for the reasons detailed below, New Hampshire Attorney General Foster has determined that Haverhill Police Officers Ryan Jarvis and Greg Collins were justified under the law in their use of deadly force, which resulted in the death of Hagen Esty-Lennon.

FACTUAL BACKGROUND

Around 3:30 p.m. on July 6, 2015, Officer Ryan Jarvis and Officer Greg Collins were on duty in full uniform at the Haverhill Police Department when they heard over their radio that there was an accident in Bath. Officer Collins called Grafton County Dispatch and learned that the accident scene was unsecure because the man involved in the accident was armed with a knife. Officer Collins believed this report to mean that the

man was brandishing a knife, since a knife located on a person's hip would not necessarily cause attention. Dispatch requested that Haverhill Police respond to and secure the scene, pursuant to their mutual aid agreement with Bath.

Officer Jarvis and Officer Collins left the station in separate cruisers. Both cruisers were clearly marked with the words "Haverhill NH Police" across the cruisers' side doors, and their lights and sirens were activated as they traveled to the scene. While en route, each officer learned from the information transmitted over the cruiser radio that there was an individual walking south/west on Route 302 toward Woodsville with what appeared to be a stab wound to his chest.

The officers arrived on scene at about 3:45 p.m. They parked one behind the other, shut off their cruisers' sirens, but left the cruisers' overhead lights on. The second cruiser's camera was on¹, and both officers activated their body cameras.²

Both officers exited their cruisers and observed a male matching the description provided by Dispatch. Esty-Lennon was a large man, six feet one inches tall, weighing two hundred and seventy-five pounds.³ Officer Collins was first to approach Esty-Lennon and ordered him to show his hands. Esty-Lennon initially complied, and then immediately put his hands in his pockets and took out a knife. As soon as they saw the knife in his hand, both officers un-holstered and raised their weapons. They also repeatedly ordered Esty-Lennon in loud voices to, "put the knife down," to "drop the knife," and to stop walking toward them. In an effort to convince Esty-Lennon to

¹ Though both cruisers were equipped with cameras, only one was working that afternoon.

² Officer Collins's body camera was activated while he was traveling to the scene and thereafter. Officer Jarvis turned on his body camera upon arrival at the scene. Both cameras also captured audio from the event.

³ His height and weight were verified at the autopsy.

comply, one officer told Esty-Lennon that they would shoot him. However, Esty-Lennon did not comply and drop the knife.

Officer Collins then also drew his TASER. At this time, Esty-Lennon looked behind him, looked back at the officers and started walking backwards. Then, he turned and began walking, then running away from the officers. During this interaction with the police Esty-Lennon refused to comply with the officers' orders to drop the knife and still had it in his hand as he moved away from them.

Officer Collins began running toward Esty-Lennon with his TASER drawn while Officer Jarvis provided cover with his firearm. Within seconds, however, Esty-Lennon quickly and abruptly turned around and began moving toward the two officers with the knife still in his hand. Officer Jarvis yelled, "Greg, leave it, leave it," which Officer Collins interpreted to mean that he should drop his TASER. Officer Collins dropped his TASER and aimed his gun at Esty-Lennon. Esty-Lennon then charged at the officers, still brandishing his knife. During these events, the officers loudly and repeatedly told Esty-Lennon to "drop the knife," which he refused to do. Instead, Esty-Lennon continued to charge at the officers, closing the gap between them to about ten to fifteen feet.⁴ At that point, both officers began firing at Esty-Lennon. Esty-Lennon was hit multiple times by the gunfire and fell to the pavement.⁵

⁴ Although the distance from Esty-Lennon to the officers is difficult to determine from the video, Officer Jarvis estimated the distance to be approximately ten feet, while Officer Collins stated that the distance could have been ten to fifteen feet.

⁵ The entire interaction between the two officers and Esty-Lennon, from the time the officers arrived on scene to the time that shots were fired, lasted approximately 43 seconds.

Officer Jarvis immediately radioed that shots had been fired and an ambulance was needed. He then approached Esty-Lennon and while handcuffing him, located the knife beneath Esty-Lennon's body, tossing it to the side. Esty-Lennon was breathing at this time.

Once the scene was secure, the emergency medical responders and the two Haverhill officers lifted Esty-Lennon onto a stretcher. Haverhill Sergeant Wallace Trott then arrived on scene and immediately separated the officers and took control of the scene.

Esty-Lennon was transported to Cottage Hospital in Woodsville, New Hampshire, where he was pronounced dead. Following an autopsy, New Hampshire's Chief Medical Examiner, Dr. Thomas A. Andrew, determined that Esty-Lennon suffered six gunshot wounds to his body.⁶ The cause of death was the one wound to Esty-Lennon's shoulder. The manner of death was ruled a homicide, since the death was caused by another person.

During the autopsy, Dr. Andrew also discovered that Esty-Lennon had one stab wound to the chest. That wound was a non-life threatening wound, which appeared to be self-inflicted. Toxicological testing revealed that Esty-Lennon had levels of an amphetamine in his blood that were slightly higher than the therapeutic dosage, along with a quantity of Klonopin, which is both an anti-convulsive drug and an anti-anxiety drug.

⁶ Since Mr. Esty-Lennon was running when he was shot and then started to fall as he was hit by gunfire, the wounds are to the front and back of his body.

THE INVESTIGATION

As per protocol, the New Hampshire Attorney General's Office and Detectives with the New Hampshire State Police Major Crime Unit investigated the officers' use of deadly force against Esty-Lennon. The shooting scene was immediately secured by the Haverhill Police Department and processed by the Major Crime Unit and the New Hampshire State Police CAR Team, who also processed the scene of Esty-Lennon's motor vehicle accident.⁷ In addition, the Major Crime Unit interviewed Officer Jarvis and Officer Collins, witnesses to Esty-Lennon's accident prior to the shooting, a witness who observed the shooting,⁸ and they collected background information on Esty-Lennon. They also secured and reviewed the body camera footage from Officer Jarvis, Officer Collins, Sergeant Trott, and the cruiser camera footage. Finally, the Major Crime Unit secured the officers' uniforms and their weapons.

Officer Jarvis and Officer Collins provided statements to members of the Major Crime Unit that were consistent with each other and that were corroborated by their body cameras and cruiser footage, and by witnesses at the scene. The critical facts included: (1) Esty-Lennon drew a knife from his pants pocket as he walked toward the officers; (2) Esty-Lennon refused to drop the knife despite the officers' repeated, loud, and clear commands to do so; (3) Esty-Lennon's movements as he approached the officers, followed by his turning and running away from them; (4) Officer Collins's attempted de-

⁷ "CAR" stands for Collision Analysis and Reconstruction.

⁸ Investigators also spoke with a second witness to the shooting. This woman corroborated certain aspects of what was captured by the officers' body cameras, but also made some statements that were contradicted by the video, such as Esty-Lennon yelling, taking unsteady steps both away and toward the officers, and the absence of Esty-Lennon's knife until just prior to the shooting.

escalation of the use of force by switching his gun for his TASER; (5) Esty-Lennon's sudden and quick turn back toward the officers; (6) Esty-Lennon's charge toward the officers with his knife out; and (7) Esty-Lennon's proximity to the officers during the entire encounter, including that he was within approximately ten to fifteen feet of the officers before they discharged their firearms. Finally, when interviewed, both officers told the Detectives that the reason they fired at Esty-Lennon was because they believed he was going to kill them or others.

When the State Police Detectives searched the scene, they found nine discharged .45 caliber cartridge casings from the officers' guns, on the ground around the area where Esty-Lennon was shot. Inspection of the officers' firearms revealed that five bullets were fired from each officer's gun, for a total of ten shots fired.⁹ The officers were clothed in full uniform of the Haverhill Police Department at the time they responded to this call.

State Police Detectives learned that prior to the shooting, Esty-Lennon drove his Toyota FJ Cruiser off of Route 302 down a grassy path to a closed bridge that was barricaded by large boulders at both exits. Esty-Lennon drove his car into a boulder at the bridge's eastern entrance, moving the substantial boulder a short distance before driving across the bridge and crashing into the second boulder at the western entrance. The second crash resulted in the vehicle's air bags deploying. Individuals in the area responded to the accident in an attempt to aid Esty-Lennon. One witness reported that

⁹ The officers' Smith and Wesson .45 caliber handguns were turned in and secured for inspection immediately following the incident.

Esty-Lennon had a knife in his hand following the accident and that Esty-Lennon had stated to another person present that he had “[done] things a lot worse” and that he was a “fugitive.” Another witness reported that another person at the scene advised she had pulled a knife from Esty-Lennon's chest.¹⁰ Individuals at the scene of the motor vehicle accident encouraged Esty-Lennon to wait for the ambulance to arrive to treat him, but instead he walked away from the accident scene and headed south/west on Route 302.

As part of the investigation, State Police Detectives gathered some background information about Esty-Lennon and his activities before the shooting incident. They learned that Esty-Lennon was living in Canterbury, New Hampshire at the time of the shooting and worked at the New Hampshire Technical Institute as a Chef. On July 5, Esty-Lennon called work notifying them that he would be out sick on Monday, July 6, 2015.

Esty-Lennon's landlady told State Police Detectives that in recent weeks, Esty-Lennon had displayed behavior suggesting that he was suffering from hallucinations. She last saw Esty-Lennon around 2:00 p.m. on July 6, 2015, the day of the shooting incident.

The travel time from Esty-Lennon's home in Canterbury to Bath is approximately 90 minutes. However, investigators have not determined why Esty-Lennon was in Bath, New Hampshire around 3:30 p.m. that afternoon and why he drove off of Route 302 into the boulders at the bridge. Given his landlady's observations of his behavior in the weeks

¹⁰ This is corroborated by the officers' body camera videos and the still photos taken from those videos, which confirm that Esty-Lennon already had a wound to his chest before he encountered the officers. Blood from that wound can be seen on Esty-Lennon's shirt.

before the shooting, it is possible that Esty-Lennon was experiencing mental health issues, trying to harm himself, or trying to commit suicide. That is especially likely in light of the self-inflicted knife wound Esty-Lennon had to his chest. The possibility that Esty-Lennon was mentally ill and potentially wanted to harm himself or commit suicide may also explain why he pulled a knife on the officers, refused to drop it, and then advanced on them even after they had drawn their weapons, ordered him to drop the knife, and warned him that if he did not drop the knife they would shoot him.

ANALYSIS AND CONCLUSION

New Hampshire's laws regarding self-defense, defense of others, and the use of physical force by law enforcement are set forth in RSA 627. Under RSA 627:5, II (a), a law enforcement officer is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. "Deadly force" is defined in RSA 627:9, II, as any assault which the actor commits with the purpose of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." *State v. Gorham*, 120 N.H. 162, 163-64 (1980). The term "reasonable" "is determined by an objective standard." *State v. Leaf*, 137 N.H. 97, 99 (1993). All the circumstances surrounding the incident should be considered. *See id.* at 99; *Aldrich v. Wright*, 53 N.H. 398 (1873).

When analyzing the reasonableness of an actor's use of deadly force, the State must consider that it would bear the burden at trial to disprove a claim of self-defense or defense of another beyond a reasonable doubt. *See State v. McMinn*, 141 N.H. 636, 645 (1997). The person who uses deadly force has no obligation to show that his conduct was reasonable or met the requirements of the law. In other words, the inquiry must focus on the situation from the standpoint of a reasonable law enforcement officer facing the same situation. That examination cannot be made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact.

In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer's conduct would be judged when excessive force claims were brought against him. The Court confirmed that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. The Court went on to explain how to determine what is reasonable in situations where police officers use force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation.

Id. at 396-97; *see also Ryburn v. Huff*, 132 S. Ct. 987, 992 (2012). The Eleventh Federal Circuit has noted that,

The Supreme Court has emphasized that there is no precise [37] test or "magical on/off switch" to determine when an officer is justified in using excessive or deadly

force. . . Nor must every situation satisfy certain preconditions before deadly force can be used. . . . Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted). That is because “the law does not require perfection – it requires objective reasonableness.”

Phillips v. Bradshaw, 2013 U.S. Dist. LEXIS 44646 *55-56 (S. Dist. Fl. 2013).

Applying the self-defense law and the applicable legal standards to the facts of this incident, the Attorney General concludes that Officer Jarvis and Officer Collins were justified in using deadly force against Hagen Esty-Lennon on July 6, 2015. Prior to using deadly force, the officers attempted to de-escalate the situation in a variety of ways. First, Officers Jarvis and Collins told Esty-Lennon loudly and clearly, multiple times, to drop his knife and to stop advancing toward them. Esty-Lennon was even told that the officers would shoot him in an effort to get him to comply, but Esty-Lennon refused to comply. The officers continued attempting to de-escalate the situation by having Officer Collins draw his TASER, while both officers continued to give loud verbal commands to Esty-Lennon to drop the knife and to stop advancing. Despite these attempts, Esty-Lennon still refused to comply with the officers’ commands and, with his knife still drawn, ran away from the officers. Officer Collins ran toward Esty-Lennon with the TASER drawn, but Esty-Lennon quickly and suddenly turned back toward the officers, running at them while brandishing his knife. Officer Collins, reacting to the threat of deadly force and in compliance with Officer Jarvis’s commands, dropped his TASER and

took aim with his handgun again. Only then, as Esty-Lennon continued to charge them with the knife in his hand, did the officers both fire their weapons.

New Hampshire police officers are trained on the use of deadly force. Currently, that training includes instruction that an individual armed with a knife can cross a 30 foot¹¹ gap and stab a police officer in the time that it would take that officer to react, draw his or her weapon, aim, and fire. Deadly force instruction for certified police officers also includes training that when deadly force is necessary, they should aim at the center of the body of the threatening individual to ensure the threat of deadly force against them or others is stopped.

As far as TASER usage, officers are taught that they cannot be too close to their target when they fire the TASER, otherwise the TASER's barbs will not land far enough apart to deliver an incapacitating shock. A TASER also has a limited range since their wires only extend 25 feet.

To incapacitate a target, the officer's TASER barbs must also strike the individual in both the upper and lower quadrants of the body. If the intended target is only hit in one quadrant of the body, that individual will not be incapacitated and will still be able to move.

The ability to properly deploy the TASER's barbs becomes increasingly difficult if the target is moving or if the shooter is moving or shaking. Thus, at the time Esty-Lennon turned and ran toward the officers, it would have been highly unlikely that the

¹¹ Officer Jarvis stated during his interview that when he attended training on the use of deadly force, the distance that an individual armed with a knife could clear before he could pull his weapon, aim, and fire was 21 feet.

TASER would have deployed successfully, stopping Esty-Lennon before he could use deadly force against the officers.

Here, the footage from the officers' body cameras shows that Esty-Lennon was running toward the officers with his knife in his hand before the officers fired their weapons at him. The video footage also shows that just before the shots were fired, Esty-Lennon ducked his head so that he was running closer to the ground. Initially, when watching the videos at regular speed, it was unclear whether Esty-Lennon did that because he was trying to accelerate toward the officers, was bracing himself for the gunfire he thought he had just prompted, or whether he had lost his footing and was falling forward. However, an examination of the videos at a slow playback speed confirms that Esty-Lennon was shot before he fell to the ground and had not lost his footing before that happened. This is further corroborated by the trajectory of one of Esty-Lennon's bullet wounds, which was documented at autopsy. That wound reveals that the bullet entered just above his lip and exited the area of his right ear. The location and trajectory of that bullet wound is consistent with Esty-Lennon's face being up and level with the officers when he was hit by that bullet, i.e., he was not falling to the ground, but was likely trying to accelerate as he ran toward the officers or duck under the impending gunfire.

This conclusion is further corroborated by still photos taken from the videos. From those photos, it is clear that Esty-Lennon took several steps toward the officers and was charging at them with a knife in his hand just before they fired their weapons. In

addition, these photos depict Esty-Lennon's angry and determined face, as described by the officers in their interviews.

Based on all the facts and circumstances of this case, the Attorney General concludes that Hagen Esty-Lennon's entire course of conduct created a dangerous situation that escalated to the point where it became reasonable for Haverhill Police Officers Ryan Jarvis and Greg Collins to believe that they were faced with the imminent threat of deadly force by Esty-Lennon. The fact that this confrontation took place with first responders nearby and with the occupied Twin River Campground just down the road, gave rise to a potential danger to others who were close by had Esty-Lennon not been stopped. Moreover, at the time of the shooting, Esty-Lennon was charging toward the officers in an aggressive manner, with his knife in hand, after he had failed to heed repeated commands to drop his weapon or stop advancing. Thus, when Esty-Lennon, a man who was six feet tall, weighed two hundred and seventy five pounds, and was armed with a knife, closed the distance between him and the officers, those officers could reasonably believe that he posed a threat of imminent use of deadly force. Therefore, Officer Ryan Jarvis and Officer Greg Collins's use of deadly force against Mr. Hagen Esty-Lennon was legally justified.

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